

EXHIBIT A

In The Matter Of:

MICROSOFT CORPORATION

v.

MOTOROLA INC., et al.

RICHARD HOLLEMAN - Vol. 1

June 19, 2013

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MERRILL CORPORATION

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RICHARD HOLLEMAN - 6/19/2013

Page 56

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

-----X
MICROSOFT CORPORATION,

Plaintiff,

- vs -

MOTOROLA, INC., et al,

Defendants.

-----X
MOTOROLA MOBILITY, INC., et al.,

Plaintiffs,

- vs - Case No. 1:10-1823-JLR

MICROSOFT CORPORATION,

Defendant.

-----X
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Continued Videotaped DEPOSITION of RICHARD
HOLLEMAN, held at the offices of Sidley & Austin
LLP, 787 Seventh Avenue, New York, New York, on
the 19th day of June 2013, commencing at 9:10
a.m., before Colette Cantoni, a Registered
Professional Reporter and Notary Public of the
State of New York, pursuant to Notice.

(2005-451696)

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RICHARD HOLLEMAN - 6/19/2013

Page 63

1	A	No, they haven't.	09:14:02
2	Q	Okay. You're not offering any	09:14:03
3		opinions on legal issues, are you?	09:14:07
4	A	No, I'm not.	09:14:08
5	Q	You're not offering any opinions on	09:14:09
6		economics?	09:14:11
7	A	Definitely not.	09:14:11
8	Q	And you're not offering any opinions	09:14:12
9		on relocation costs in Europe?	09:14:14
10	A	I'm sorry, what kind of costs?	09:14:18
11	Q	Relocation costs in Europe.	09:14:21
12	A	Relocation costs in Europe.	09:14:23
13		No, I'm not.	09:14:25
14	Q	You're not offering any opinions on	09:14:26
15		any amount of damages that might be	09:14:27
16		appropriate in this matter?	09:14:29
17	A	That's right, I am not.	09:14:30
18	Q	You're not offering any opinions	09:14:31
19		about the SD3C or the SDA, are you?	09:14:33
20	A	Correct, I am not.	09:14:37
21	Q	You're not offering any opinions	09:14:39
22		concerning any Microsoft patents?	09:14:41
23	A	That's correct, I am not.	09:14:43
24	Q	You're not offering any opinions	09:14:44
25		concerning any Motorola patents?	09:14:49

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RICHARD HOLLEMAN - 6/19/2013

Page 83

1 report and disregards the materials, but you 09:38:19
2 can answer. 09:38:21

3 A I have a little difficulty with 09:38:23
4 characterizing it as my personal experience. 09:38:26

5 I think from my reports and my 09:38:31
6 listing of my CV it's more than what I would 09:38:35
7 call personal. 09:38:39

8 There was professional involvement. 09:38:41

9 And it's certainly from the result of my 09:38:45

10 professional activities involved in standards 09:38:49

11 for, you know, 30, more than 30 years that 09:38:53

12 helped form the basis for my expert opinions 09:38:58

13 concerning the SDOs. 09:39:04

14 Q Okay. Understand that. 09:39:05

15 A Okay. 09:39:07

16 Q But you don't have a degree in 09:39:08
17 standard setting organizations or standard 09:39:11
18 developing organizations? 09:39:13

19 A No, I do not. 09:39:14

20 Q Okay. 09:39:15

21 A If you're about to go to another 09:39:17
22 question. When -- a couple of questions ago 09:39:19
23 when we were talking about what the IEEE staff 09:39:26
24 does or doesn't do -- 09:39:31

25 Q Um-hum. 09:39:33

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RICHARD HOLLEMAN - 6/19/2013

Page 91

1 mischaracterizes his testimony, and it's been 09:57:28
2 asked and answered. And I object to the form 09:57:32
3 of the question. 09:57:35

4 You can answer. 09:57:37

5 A No, I have -- in my involvement with 09:57:39
6 both the IEEE and the ITU and many 09:57:44
7 patent-related standards issues, there was 09:57:51
8 never an issue that required me to consult 09:57:54
9 with an attorney in that regard. 09:57:57

10 Q You opine in your expert reports 09:58:04
11 that RAND commitments that Motorola made to 09:58:06
12 the ITU and the IEEE do not limit Motorola's 09:58:11
13 ability to seek injunctions on its 09:58:17
14 standard-essential patents for either the 09:58:19
15 802.11 or H.264 standards, correct? 09:58:23

16 A Not exactly. 09:58:26

17 Q How would you put it? 09:58:28

18 A My statement is that the patent 09:58:31
19 policies of IEEE and the ITU do not address 09:58:34
20 injunctions in any way, and are outside of the 09:58:42
21 scope of their patent policies. 09:58:47

22 Q So you're not offering any opinions 09:58:51
23 as to whether Motorola was limited in any way 09:58:53
24 in seeking injunctions on its 09:58:57
25 standard-essential patents for the 802.11 or 09:59:01

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RICHARD HOLLEMAN - 6/19/2013

Page 93

1 policies of both SDOs do not in any way 10:00:16
2 address injunctions. And just as negotiations 10:00:20
3 and legal matters are considered outside the 10:00:25
4 scope of the patent policies, that would be 10:00:28
5 outside the scope of the SDO's patent 10:00:32
6 policies. 10:00:37

7 Q So you're not saying that the SDO 10:00:50
8 patent policies expressly allow Motorola to 10:00:53
9 seek injunctions, are you? 10:00:57

10 A I think, as I said, considerations 10:00:59
11 relating to injunctions are outside the scope 10:01:03
12 of the patent policies. 10:01:05

13 Q I'm just trying to understand what 10:01:08
14 you mean -- 10:01:10

15 A So I wouldn't -- 10:01:11

16 Q -- "outside the scope of the patent 10:01:12
17 policies." 10:01:13

18 So, are you saying that the IEEE and 10:01:15
19 the ITU simply have no position one way or the 10:01:17
20 other on whether Motorola can seek injunctions 10:01:20
21 on its standard-essential patents? 10:01:22

22 A Correct. It's not part of the 10:01:26
23 patent policies. 10:01:28

24 Q In your understanding, could 10:01:36

25 Motorola have sued Microsoft and sought an 10:01:37

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RICHARD HOLLEMAN - 6/19/2013

Page 94

1 injunction without ever making any offer to 10:01:40
2 license its H.264 or 802.11 standard-essential 10:01:43
3 patents? 10:01:48

4 MR. CUSHING: Object to the form of 10:01:48
5 the question, vague, improper hypothetical and 10:01:50
6 incomplete. You can answer. 10:01:52

7 A I believe that's beyond the scope of 10:01:57
8 my testimony relative to SDOs, and it would 10:01:58
9 involve some legal conclusions that I'm not 10:02:03
10 qualified to give in terms of whether Motorola 10:02:06
11 could or could not seek such action 10:02:09
12 independent of any RAND commitment. 10:02:12

13 Q Do the patent policies, the IPR 10:02:18
14 policies of either the IEEE or the ITU, 10:02:23
15 require Motorola to make an offer to license 10:02:27
16 its standard-essential patents before seeking 10:02:30
17 an injunction? 10:02:32

18 MR. CUSHING: I'm going to object, 10:02:34
19 lack of foundation. 10:02:36

20 MR. CEDEROTH: Actually, let me 10:02:37
21 withdraw the question because I screwed it up 10:02:38
22 at the end. I'll start over with it. 10:02:40

23 A Okay. 10:02:43

24 Q Do the IPR policies of either the 10:02:49
25 ITU or IEEE require Motorola to make an offer 10:02:53

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RICHARD HOLLEMAN - 6/19/2013

Page 96

1 Have you reviewed those letters? 10:04:25

2 A Yes. 10:04:27

3 Q Okay. And I believe you have opined 10:04:28

4 that those letters represent an invitation to 10:04:35

5 participate in good faith negotiations in 10:04:41

6 relation to RAND license for each of those 10:04:44

7 standards, correct? 10:04:46

8 A Yes. 10:04:48

9 Q You're also aware, and I believe 10:04:54

10 your report mentions, that after receiving 10:04:56

11 those letters Microsoft instituted this 10:05:00

12 lawsuit seeking to have a determination of 10:05:05

13 what a proper RAND royalty would be for each 10:05:09

14 of those two standards, correct? 10:05:13

15 A Yes. 10:05:15

16 Q And it's your opinion that by filing 10:05:19

17 this action Microsoft refused to participate 10:05:23

18 in good faith negotiations, correct? 10:05:28

19 MR. CUSHING: Object to form. 10:05:31

20 A It's not so much my opinion, it's my 10:05:33

21 understanding that that did not take place. 10:05:36

22 Q So you're not drawing any 10:05:45

23 conclusions in terms of your opinions based on 10:05:46

24 the fact that Microsoft filed this lawsuit? 10:05:51

25 MR. CUSHING: Excuse me. Would you 10:05:54

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RICHARD HOLLEMAN - 6/19/2013

Page 97

1 read that back, please, I didn't quite catch 10:05:55

2 that. 10:05:58

3 MR. CEDEROTH: You may want to read 10:05:59

4 back the prior answer, also. 10:06:01

5 (Record read.) 10:06:02

6 MR. CUSHING: Object to the form. 10:06:28

7 You can answer it if you can. 10:06:29

8 A That's really outside the scope of 10:06:33

9 my testimony. It's outside the procedure of 10:06:38

10 the SDO patent policy. This is in the area of 10:06:43

11 the negotiations between the two parties 10:06:49

12 which, as the ITU specifically says, is left 10:06:52

13 outside of the ITU. 10:06:56

14 Q Would your opinions in this case 10:07:07

15 differ in any way if instead of filing this 10:07:09

16 lawsuit Microsoft had simply written back to 10:07:12

17 Motorola saying, Your demands were outrageous, 10:07:17

18 please provide us with a true RAND offer? 10:07:22

19 MR. CUSHING: Objection, the 10:07:27

20 question's outside the scope. You can answer. 10:07:28

21 A The only comment I would make is 10:07:35

22 that negotiation involves interaction between 10:07:37

23 the parties involved. And the SDOs envision 10:07:44

24 that there will be interaction on a bilateral 10:07:50

25 basis between the patentholder who has made 10:07:52

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RICHARD HOLLEMAN - 6/19/2013

Page 128

1 testified in my report, I've commented that 11:05:53
2 from the SDO perspective, okay, they made a 11:05:57
3 commitment, a letter assurance to license on 11:06:04
4 the RAND terms and conditions. And in 11:06:06
5 reviewing these letters at the time, there was 11:06:11
6 nothing here that would lead me to believe 11:06:15
7 that these were not offers made in good faith 11:06:17
8 with the intent of negotiating a RAND license. 11:06:21

9 The Court's actions are separate and 11:06:26
10 apart from my considerations. 11:06:28

11 Q But based on the Court's actions, 11:06:31
12 neither of the October 2010 letters set forth 11:06:33
13 RAND terms and conditions for Microsoft? 11:06:38

14 A I have no -- 11:06:42

15 MR. CUSHING: Objection as to 11:06:43
16 form -- excuse me -- as to form and outside 11:06:44
17 the scope. You may answer. 11:06:45

18 A Yeah, I think sort of, as I said 11:06:47
19 before, I have no opinion on trying to equate 11:06:49
20 these letters to what the Court's, the Court's 11:06:52
21 Order. 11:06:56

22 Q Now, how have you studied these 11:07:06
23 letters to determine that they communicate a 11:07:08
24 good faith invitation to negotiate? 11:07:11

25 A Well, in reading the letters, 11:07:16

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RICHARD HOLLEMAN - 6/19/2013

Page 129

1 clearly Mic- -- Motorola is offering to grant 11:07:19
2 Microsoft a worldwide nonexclusive license 11:07:28
3 under Motorola's patents. That indicates a 11:07:30
4 willingness to license in that regard, and to 11:07:37
5 do it according to the IEEE bylaws, patent 11:07:41
6 policy. 11:07:46

7 And similarly, on the other letter, 11:07:47
8 according to the ITU, and Motorola indicates 11:07:50
9 that it does include, offers licenses under 11:07:58
10 RAND terms and conditions, it states its view, 11:08:05
11 a reasonable royalty rate. And in reading the 11:08:13
12 letter, the, I think it's pretty evident that 11:08:18
13 this is an attempt on Motorola's part to 11:08:23
14 engage Microsoft in a negotiation for a 11:08:28
15 license. 11:08:33

16 Q Where does the letter invite a 11:08:34
17 negotiation, either letter? 11:08:40

18 A I don't see the word "negotiation." 11:08:44
19 What I see is an offer to license. 11:08:47

20 Q And it's your opinion that the offer 11:08:51
21 does not need to be RAND, correct? 11:08:52

22 A No. The offer -- if you're talking 11:08:55
23 about, quote-unquote, a RAND offer, as the 11:08:59
24 term is sometimes used, and in this case an 11:09:04
25 initial RAND offer -- and I think as I comment 11:09:09

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RICHARD HOLLEMAN - 6/19/2013

Page 147

1	correct?	11:32:57
2	A Correct.	11:32:57
3	Q Okay. And that can be determined	11:32:58
4	simply by reading the policies, correct?	11:33:01
5	A Correct.	11:33:06
6	Q You don't know, though, as a legal	11:33:06
7	matter whether, despite the fact they don't	11:33:07
8	mention injunctions one way or the other, they	11:33:11
9	might nonetheless limit the IPR holder's	11:33:16
10	rights to enforce its patents, including the	11:33:19
11	right to seek an injunction?	11:33:21
12	MR. CUSHING: Object to the form of	11:33:22
13	the question to the extent it calls for a	11:33:23
14	legal conclusion. You can --	11:33:26
15	A To the extent it calls for a legal	11:33:29
16	conclusion, I'm not attempting to give an	11:33:31
17	opinion on a legal conclusion.	11:33:33
18	As you stated, my opinion is based	11:33:35
19	on having read and reviewed these documents,	11:33:37
20	and having been familiar with them and my work	11:33:40
21	with the SDOs, okay. And the documents speak	11:33:43
22	about concerns about anticompetitive behavior,	11:33:47
23	okay, compe- -- competition and antitrust	11:33:52
24	concerns, which are legal matters.	11:33:56
25	So it's not that I'm giving a legal	11:34:00

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RICHARD HOLLEMAN - 6/19/2013

Page 148

1 opinion, but in reviewing the documents there 11:34:02
2 is nothing there that would, in my opinion, go 11:34:08
3 to a limitation of the patentholder's rights 11:34:13
4 to enforce its patents, nothing there that 11:34:17
5 would limit its right to seek an injunction. 11:34:21
6 And that's simply what I'm stating. 11:34:23

7 Q All right. And the basis for your 11:34:25
8 opinion is that it's not addressed in those, 11:34:28
9 it's not expressly addressed in those IPR 11:34:32
10 antitrust policies? 11:34:35

11 A Correct. 11:34:37

12 Q In the course of these negotiations 11:34:43
13 that you envisioned, at what point do you 11:34:47
14 believe that the IEEE and ITU IPR policies 11:34:54
15 permit the standard-essential patentholder to 11:35:01
16 seek an injunction? 11:35:04

17 MR. CUSHING: My objection is to the 11:35:05
18 form of the question, negotiations he 11:35:07
19 envisions. But the subject matter's beyond 11:35:10
20 the scope of his opinions in this case. You 11:35:14
21 may answer. 11:35:16

22 A The SDO takes no position to, takes 11:35:20
23 no position on what activities occur as part 11:35:24
24 of the negotiation. So to the extent that the 11:35:28
25 question you asked includes consideration of 11:35:31

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RICHARD HOLLEMAN - 6/19/2013

Page 154

1 MR. CUSHING: Objection. 11:44:06

2 Q -- is that right? 11:44:06

3 MR. CUSHING: I'm sorry, I didn't 11:44:07

4 mean to interrupt you. Object to form. You 11:44:10

5 may answer. 11:44:12

6 A I think it's pretty clearly stated 11:44:13

7 in number 4. 11:44:15

8 What I disagree with is 11:44:16

9 Dr. Murphy's, to the extent that he would like 11:44:22

10 us to accept the Court's Order, which relates 11:44:25

11 to a specific set of circumstances Motorola 11:44:29

12 might resolve, okay. And as I said in the 11:44:32

13 final sentence, it does not make sense to 11:44:36

14 consider it as a guide to bilateral 11:44:39

15 negotiations, that should have occurred 11:44:41

16 between specific parties. And in this case 11:44:44

17 offers Motorola made, neither the patent 11:44:50

18 policy of the ITU or the IEEE, that this is 11:44:53

19 not something that is part of those policies. 11:44:59

20 So while it certainly applies to the 11:45:03

21 Order, and I'm not able to question the 11:45:05

22 Judge's Order, okay, in that regard, my 11:45:10

23 disagreement is that Dr. Murphy assumes this 11:45:14

24 as the basis for all bilateral negotiations. 11:45:18

25 Q I'm trying to understand your 11:45:26

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RICHARD HOLLEMAN - 6/19/2013

Page 156

1	applicable to a unique set of circumstances	11:47:15
2	between Motorola and Microsoft.	11:47:18
3	And the Court's Order did not exist	11:47:22
4	when Motorola made its RAND assurance. And	11:47:26
5	certainly, such considerations are not part of	11:47:32
6	the SDO's patent policies.	11:47:37
7	That's the only thing I'm saying	11:47:38
8	about it. I'm not giving an opinion in terms	11:47:40
9	of whether it's good, bad or otherwise.	11:47:43
10	Q So, and again when you say that the	11:47:49
11	Court's considerations were not part of the	11:47:51
12	SDO IPR policies, you're just saying that the	11:47:54
13	Court's considerations were neither expressly	11:48:01
14	excluded nor expressly included from proper	11:48:04
15	considerations under the IPR policies?	11:48:09
16	MR. CUSHING: Object to the form and	11:48:11
17	foundation. You can answer.	11:48:12
18	A The provisions in the Court Order go	11:48:18
19	to negot- -- aspects of negotiation. And as	11:48:21
20	I've said many times, negotiations are outside	11:48:26
21	the scope of the patent policies.	11:48:29
22	Q Yeah, and I don't mean to flogger	11:48:31
23	that horse on that. I just, it's not clear to	11:48:34
24	me whether at some point there's something in	11:48:37
25	the IPR policies that you think actually	11:48:39

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RICHARD HOLLEMAN - 6/19/2013

Page 164

1 Q But forcing me to go back through, 12:00:21
2 change topics on you real quickly, because you 12:00:26
3 reminded me of something that we didn't quite 12:00:28
4 finish. 12:00:30

5 On the October 2010 letters to 12:00:32
6 Microsoft -- 12:00:40

7 A Not -- this is not hold-up. 12:00:45

8 Q Not hold-up. 12:00:48

9 A Okay. 12:00:49

10 Q (Continuing) we talked before about 12:00:50
11 your conclusion that they demonstrate, in your 12:00:52
12 opinion, a good faith invitation to negotiate 12:00:57
13 on behalf of Motorola, correct? 12:01:03

14 A Yes. 12:01:05

15 Q And is it correct that the basis for 12:01:07
16 your belief that it's a good faith invitation 12:01:13
17 to negotiate is that the letters refer to 12:01:18
18 offering standard terms in the corresponding 12:01:23
19 testimony of the Motorola witnesses in 12:01:29
20 deposition was that the letters included 12:01:34
21 standard terms? 12:01:37

22 MR. CUSHING: Objection, asked and 12:01:38
23 answered. You can answer it again. 12:01:39

24 A And an additional factor, which I 12:01:42
25 think is very important, that Motorola offers 12:01:44

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RICHARD HOLLEMAN - 6/19/2013

Page 165

1 to license the patents under reasonable 12:01:47
2 nondiscriminatory terms and conditions 12:01:51
3 according to Section 6.1 of the IEEE bylaws. 12:01:52
4 So this to me, in my expertise, is 12:01:59
5 very important that it is connected to the 12:02:03
6 RAND declaration that Motorola has made, in 12:02:09
7 addition to what you've said. 12:02:11

8 Q Okay. But that portion of the IPR 12:02:16
9 policies, both for the -- first let me ask 12:02:20
10 you. Is there a corresponding reference to 12:02:26
11 the ITU IPR policies in the second letter? 12:02:28

12 (Witness reviewing document.) 12:02:31

13 A No, I do not see one. 12:02:37

14 Q Okay. So going back to the October 12:02:39
15 21 letter that references the IEEE IPR 12:02:42
16 policies. 12:02:46

17 Those IPR policies are silent as to 12:02:48
18 what the RAND royalty should be or how the 12:02:53
19 negotiation should be conducted, if there are 12:02:57
20 any negotiations at all? 12:02:58

21 A Yes. I think I've covered that a 12:03:01
22 number of times this morning. 12:03:03

23 Q Okay. So with respect to the 12:03:05
24 October 29 letter, the basis for your 12:03:07
25 conclusion that they constituted good faith 12:03:11

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RICHARD HOLLEMAN - 6/19/2013

Page 168

1 covered a range of topics that you're not 12:19:16
2 offering opinions on, and I missed one. 12:19:21

3 And so is it correct that you are 12:19:22
4 not an expert on the market for patents, and 12:19:27
5 will not be offering any opinions as to the 12:19:29
6 market for patents? 12:19:32

7 A The market for patents? 12:19:34

8 Q The market for patents. 12:19:35

9 A Yes, I will not be offering an 12:19:36
10 opinion on that. 12:19:38

11 Q And you also will not be offering an 12:19:40
12 opinion as to any aspect of whether particular 12:19:42
13 negotiations, offers and counteroffers are in 12:19:49
14 good faith or not? 12:19:54

15 A That's right. Since that's part of 12:19:57
16 the negotiation process, and the details of 12:19:58
17 the process is beyond the scope of my opinion, 12:20:03
18 except for the, as far as the negotiations go, 12:20:08
19 except for the material that we have already 12:20:12
20 discussed and reviewed and my opinions that I 12:20:15
21 formed in terms of Motorola's actions, to that 12:20:20
22 extent I'm giving an opinion on good faith, 12:20:28
23 but not in terms of the details and 12:20:31
24 interactions in the negotiation process. 12:20:33

25 Q The extent of your opinion as to 12:20:37

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RICHARD HOLLEMAN - 6/19/2013

Page 169

1 good faith, though, extends only as far as the 12:20:39
2 Motorola letters in October 2010? 12:20:42

3 A It extends to the Motorola letters, 12:20:48
4 their letter of assurance, RAND assurance to 12:20:53
5 the IEEE, their letter to the ITU. And in the 12:20:56
6 context of those disclosures, okay, these two 12:21:05
7 letters are examples of that being put into a 12:21:08
8 practice, which is why I form my opinion, 12:21:17
9 okay, this is on paragraph 60, from the 12:21:21
10 perspective of the SDO, which is where I come 12:21:27
11 from, "Motorola has fully complied with its 12:21:29
12 RAND obligations and not violated any 12:21:32
13 provision of the SDO policy." 12:21:35

14 So again, clearly my concern, my 12:21:38
15 opinions are from that perspective 12:21:44
16 (indicating), not from any perspective having 12:21:47
17 to do with specific negotiations. 12:21:49

18 Q Okay. 12:21:52

19 A I think I've covered that a number 12:21:52
20 of times. 12:21:54

21 Q I think so. I do want to make 12:21:56
22 certain, though, that after that answer that 12:22:00
23 your, any analysis that you're performing with 12:22:02
24 respect to good faith ends at the letters that 12:22:05
25 Motorola sent in October 2010? 12:22:08

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RICHARD HOLLEMAN - 6/19/2013

Page 175

1 his opinions, but you can answer. 12:28:35

2 A Once again, the SDO would not 12:28:41

3 attempt to take a position on that, it'd be 12:28:43

4 considered outside the scope of the policy. 12:28:48

5 Q Okay. A number of times in your 12:28:50

6 reports you mentioned that Judge Robart has 12:28:56

7 found that Motorola's opening offer need not 12:29:00

8 be RAND. Do you recall that? 12:29:07

9 A Yes, I do. 12:29:11

10 Q Okay. In that same passage on the 12:29:12

11 same page of the Opinion where he mentions 12:29:16

12 that, he goes on to say that, "Nonetheless, 12:29:20

13 that does not mean that Motorola may make, 12:29:27

14 'blatantly unreasonable' offers to 12:29:34

15 implementers." 12:29:36

16 Do you recall that passage? 12:29:41

17 A Yes. 12:29:42

18 Q And you agree that a 12:29:45

19 standard-essential patentholder cannot make 12:29:46

20 blatantly unreasonable offers? 12:29:49

21 A I do not have an opinion in that 12:29:50

22 regard. 12:29:52

23 The Judge gave his opinion in that 12:29:53

24 regard. That's beyond the scope of what I 12:29:54

25 would opine about, it's beyond the scope of 12:29:55

CONFIDENTIAL - ATTORNEYS' EYES ONLY
RICHARD HOLLEMAN - 6/19/2013

Page 176

1 the SDO's patent policy.

12:30:00

2 Q Okay. So you also don't have an
3 opinion as to whether the, within the context
4 of the SDO IPR policies, the
5 standard-essential patentholder can make an
6 opening offer that's not RAND?

12:30:03

12:30:04

12:30:11

12:30:13

12:30:16

7 MR. CUSHING: I'm going to object, I
8 believe that mischaracterizes his prior
9 testimony. You can answer.

12:30:20

12:30:21

12:30:23

10 A My testimony is that the whole idea
11 of initial offers are really not what's
12 driving or motivating the RAND commitment.
13 And from the SDO's perspective, it's the RAND
14 license itself that results from the
15 negotiations that is a significant aspect,
16 because it's that RAND license that allows
17 implementation of the standard, which is the
18 objective of the SDO.

12:30:25

12:30:31

12:30:35

12:30:38

12:30:44

12:30:47

12:30:50

12:30:53

12:30:57

19 So I would --

12:30:59

20 Q Okay.

12:31:00

21 A -- agree, and I would say that the
22 SDOs are not concerned about initial offers,
23 they're concerned about hopeful outcome of a
24 RAND license.

12:31:01

12:31:04

12:31:09

12:31:12

25 Q Let me parse that out a little bit.

12:31:16

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Page 187

1 MR. CUSHING: It starts with "This 12:45:06

2 is." 12:45:08

3 MR. CEDEROTH: Yes. Yes. 12:45:08

4 Q And actually, let me skip to the 12:45:09

5 next, which says, "Any patent policy must 12:45:13

6 account for the fact that many patentholders 12:45:15

7 will only contribute their patented technology 12:45:17

8 if they know they are able to receive a 12:45:21

9 reasonable return on their R&D investments." 12:45:23

10 What is your basis for that 12:45:37

11 conclusion? 12:45:39

12 A There are, has been in some cases 12:45:46

13 attempts by some SDOs to have a policy that 12:45:55

14 involves compulsory licensing. Compulsory 12:46:00

15 licensing at, on the basis of any 12:46:06

16 participation has to be royalty-free. 12:46:12

17 And in the case of the ITU, IEEE, 12:46:18

18 there is a recognition that if technology, 12:46:24

19 particularly high-tech technology, is to be 12:46:31

20 incorporated into the standard, that 12:46:38

21 technology has been developed at considerable 12:46:40

22 time, cost, use of resources. 12:46:45

23 And if the SDO says in order to 12:46:48

24 contribute that technology and participate you 12:46:53

25 have to do it royalty-free, or that by 12:46:57

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RICHARD HOLLEMAN - 6/19/2013

Page 188

1 participating you are under a compulsory 12:47:01
2 licensing plan, which had been suggested at 12:47:06
3 one point in some SDOs, there are companies 12:47:11
4 who would not want to join in the 12:47:17
5 standardization activity. 12:47:22

6 And so when I talk about 12:47:25
7 recognition, it's recognizing that you need to 12:47:27
8 have, again I said, a balance that allows for 12:47:33
9 the patentholder to be able on one hand to get 12:47:40
10 its technology included in the standard, but 12:47:46
11 yet at the same time not have to give up 12:47:49
12 everything that it put into the development of 12:47:53
13 that technology. 12:47:55

14 I'm sorry, that's sort of a long 12:47:57
15 answer, but I think that's why there is this 12:47:59
16 recognition. 12:48:01

17 Q Are there any documents from the 12:48:04
18 IEEE or ITU that explain striking this balance 12:48:11
19 that you just described? 12:48:19

20 A I'm not aware of a specific document 12:48:24
21 that talks about this balance. 12:48:29

22 This is based on my opinion, having 12:48:32
23 served for many years on, in the case of the 12:48:35
24 IEEE, the Standards Board, the Board of 12:48:40
25 Governors, Chairing the Patent Committee, and 12:48:43

EXHIBIT B

In The Matter Of:

MICROSOFT CORPORATION

v.

MOTOROLA INC., et al.

MAXIMILIAN HAEDICKE - Vol. 1

June 14, 2013

MERRILL CORPORATION

LegalLink, Inc.

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4th Floor
San Francisco, CA 94105
Phone: 415.357.4300
Fax: 415.357.4301

MAXIMILIAN HAEDICKE - 6/14/2013

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

---o0o---

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

vs.

Case No. 10-1823

MOTOROLA, INC., MOTOROLA
MOBILITY, INC., and GENERAL
INSTRUMENT CORPORATION;

Defendants.

/

VIDEOTAPED DEPOSITION OF
MAXIMILIAN HAEDICKE

Friday, June 14, 2013

REPORTED BY: RACHEL FERRIER, CSR 6948

(1-451692)

MAXIMILIAN HAEDICKE - 6/14/2013

Page 53

1 eurocent? 10:00:29

2 MS. BERRY: Objection; form. 10:00:29

3 THE WITNESS: I'm not -- I'm not -- I have no 10:00:30

4 opinion on that as I don't know the details. 10:00:33

5 BY MR. LOVE: 10:00:35

6 Q Microsoft's Orange Book offer that was rejected 10:00:36

7 was 2 eurocents, so if Microsoft had offered half a 10:00:38

8 eurocent, would it have been able to avoid an 10:00:43

9 injunction? 10:00:45

10 A If it's less than what has been given here, 10:00:45

11 it's rather unlikely. 10:00:49

12 Q Rather unlikely, or no? 10:00:50

13 A If it's lower than what has been -- well, the 10:00:52

14 court said -- the Mannheim Court said what has been 10:00:56

15 offered is so low that the rejection is not -- is not a 10:00:59

16 breach of antitrust law as it is conceivable that the 10:01:06

17 rate has to be higher. 10:01:12

18 So if the rate would have been lower, it is -- 10:01:15

19 I cannot second-guess what the court would have said, 10:01:20

20 but it's -- it's pure logic that if it's lower, I assume 10:01:23

21 that also the same standard would have been applied, and 10:01:25

22 the same standard would have taught that the rejection 10:01:28

23 of such an offer is a violation of European antitrust 10:01:32

24 law. 10:01:36

25 Q If Microsoft had escrowed a sufficient amount 10:01:36

MAXIMILIAN HAEDICKE - 6/14/2013

Page 54

1 of money and had allowed Motorola or the German Court to 10:01:39
2 decide about an equitable license fee, would Microsoft 10:01:43
3 have been enjoined? 10:01:47

4 A If it had followed the second procedure, the 10:01:48
5 315 procedure, it would have not been enjoined. 10:01:53

6 Q How much money would have been sufficient for 10:01:55
7 Microsoft to avoid an injunction? 10:01:57

8 MS. BERRY: Objection; form. 10:02:00

9 THE WITNESS: As this is a difficult 10:02:00
10 evaluation, taking into account all specifics of the 10:02:03
11 case, I'm not able to give you any -- any numbers there. 10:02:06

12 MR. LOVE: We have been going for about an 10:02:10
13 hour. Why don't we take a break. 10:02:11

14 THE VIDEOGRAPHER: Off the record at 10:01. 10:02:13

15 (Recess taken.) 10:02:14

16 THE VIDEOGRAPHER: Back on the record at 10:20. 10:21:01

17 BY MR. LOVE: 10:21:03

18 Q Before we took a break, I had asked you a 10:21:04
19 question earlier about if the parties in a German patent 10:21:05
20 infringement suit agree on a license fee, and I was 10:21:09
21 asking you what they would do, and I don't want to 10:21:11
22 restate your testimony, but part of your response, as I 10:21:15
23 understood it, was, there are other terms besides a 10:21:17
24 license fee that the parties would need to agree on. 10:21:23

25 Do you remember this question? 10:21:26

EXHIBIT C

In The Matter Of:

MICROSOFT CORPORATION

v.

***MOTOROLA, INC., MOTOROLA MOBILITY LLC, and
GENERAL INSTRUMENT CORPORATION***

BRADLEY S. KELLER - Vol. 1 - REVISED

June 24, 2013

***CONFIDENTIAL
SUBJECT TO THE PROTECTIVE ORDER***

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CONFIDENTIAL - SUBJECT TO THE PROTECTIVE ORDER
BRADLEY S. KELLER - 6/24/2013

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a)	
Washington corporation,)	
)	
Plaintiff,)	
)	
v.)	No. C10-1823-JLR
)	
MOTOROLA, INC., MOTOROLA)	
MOBILITY LLC, and GENERAL)	
INSTRUMENT CORPORATION,)	
)	
Defendants.)	

Videotape Deposition Upon Oral Examination
of
BRADLEY S. KELLER

Taken at 999 Third Avenue, Suite 4400
Seattle, Washington

CONFIDENTIAL - SUBJECT TO THE PROTECTIVE ORDER

DATE: Monday, June 24, 2013

REPORTED BY: Ronald L. Cook
CCR, RMR, CRR

CONFIDENTIAL - SUBJECT TO THE PROTECTIVE ORDER
BRADLEY S. KELLER - 6/24/2013

Page 83

1	A.	I can't say one way or the other. I -- I	11:00:28
2		don't -- I don't know, but I don't think so.	11:00:29
3	Q.	How about the portion of the 1823	11:00:30
4		proceedings involving the anti-suit injunction? Do	11:00:34
5		you know who argued that anti-suit injunction motion	11:00:40
6		before Judge Robart?	11:00:43
7	A.	In the trial court proceedings?	11:00:44
8	Q.	Yes.	11:00:46
9	A.	No.	11:00:46
10	Q.	Okay.	11:00:48
11	A.	I think I -- I was -- when I got granular	11:00:49
12		on the -- what you call the anti-suit injunction, I	11:00:53
13		was looking more at the appellate proceedings.	11:00:58
14	Q.	Would it surprise you if I told you it	11:01:03
15		was a New York lawyer who argued the motion before	11:01:05
16		Judge Robart?	11:01:07
17	A.	It would neither surprise me or not	11:01:08
18		surprise me. It would just not be relevant to me.	11:01:10
19	Q.	And why is it not relevant?	11:01:14
20	A.	Same reason as -- as the earlier	11:01:16
21		question. Who a client chooses to do something is not	11:01:17
22		important to me. It's a question of is it necessary.	11:01:21
23		Was it necessary to have -- you know, to	11:01:26
24		have someone from New York do it? My answer would be	11:01:28
25		no. They can choose to do it if they want, but it's	11:01:31